

DOMESTIC VIOLENCE CASE

PROFFER ON PRIOR BAD ACTS AND CRIMINAL RECORD

Tiffany James knew that her boyfriend, the “victim” Michael Michaels, has a criminal record for a crime of violence. In fact, Michaels does have a four year old simple assault conviction from magistrate’s court.

Tiffany has been hit by Michaels before. She called the police on two occasions about Michaels hitting her. The first time she asked that the charges be dropped. She thinks Michaels pled to some lesser charge the other time.

The attorney for the defendant, Tiffany James, will argue that all of this is relevant to Tiffany’s “state of mind” because she struck the victim with a bottle because she feared he was going to hurt her or her father, since Michaels was breaking away from her father’s grasp and charging towards her when she hit him with the bottle

The solicitor takes the position that Michaels’ prior record for simple assault and Tiffany James calling the police on two prior occasions is irrelevant, and is gratuitously meant to paint the victim out to be a dangerous and bad person, and to urge the jury to acquit James on an improper basis. The evidentiary issues are: (1) admissibility of evidence the victim hit the defendant in the past; (2) admissibility of evidence the defendant called the police in the past because of the defendant’s behavior; (3) admissibility of evidence the defendant dropped the charges on one occasion; (4) admissibility of evidence the victim pled to a lesser charge, or the defendant thought he pled to a lesser charge on the other occasion; and, (5) admissibility of the fact the victim had a simple assault conviction in Magistrate’s Court from four years ago that the defendant knew about. The trial judge will hear the defendant’s proffer and then rule on what, if any, of the evidence proffered above is admissible.

DUI CASE

PRE-TRIAL MOTION TO EXCLUDE A PORTION OF THE DEFENDANT'S
STATEMENT

AND

OBJECTION IN THE PRESENCE OF THE JURY IF EITHER OBJECTIONABLE
PORTION IS ADMITTED

The defense makes a pre-trial motion to exclude part of the defendant's statement to the police officer at the scene of the accident. The defendant allegedly said he had "a little bit [to drink], but I ain't taking no test, not here, not at the jail, **I know my rights, this ain't my first rodeo.**" (emphasis added). The defense objects to (1) "I know my rights"; and, (2) "This ain't my first rodeo" portions of the defendant's statement being admitted into evidence.

The defense argues that both parts of the statement can easily be redacted. The defense argues both portions impermissibly imply the defendant has been arrested in the past and that he has a criminal record or at a minimum that he has been involved with the police in the past.

The defense argues that even if this evidence is relevant under Rule 401, SCRE, that it should be excluded under Rule 403, SCRE, because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The judge will rule on the matter pre-trial, and the defense must object again in the presence of the jury to preserve the issue if the judge denies the defense's pre-trial motion to exclude both parts of the statement.